

## II. REMARKS

### Formal Matters

Claims 1-9, 11-14, 22, 23, and 25-29 are pending after entry of the amendments set forth herein.

Claims 1-9 and 11 are amended. The amendments to the claims were made solely in the interest of expediting prosecution, and are not to be construed as an acquiescence to any objection or rejection of any claim. Support for the amendments to claims 1-9 and 11 is found in the claims as originally filed, and throughout the specification, in particular at the following exemplary locations: page 20, lines 14-26; page 10, lines 9-21; and page 11, lines 16-17. Accordingly, no new matter is added by these amendments.

Claims 10, 15-21 and 24 are canceled without prejudice to renewal, without intent to acquiesce to any rejection, and without intent to surrender any subject matter encompassed by the canceled claims. Applicants expressly reserve the right to pursue any canceled subject matter in one or more continuation and/or divisional applications.

Applicants respectfully request reconsideration of the application in view of the remarks made herein.

### Restriction Requirement

In the Restriction Requirement, the Examiner required election of one of the following groups of claims:

Group I: Claims 1-5 and 10-13, drawn to a pharmaceutically useful compound for inhibiting immunostimulation by immunostimulatory sequence oligodeoxynucleotides comprising an oligonucleotide containing a hexamer region having the nucleotide sequence AAGGTT;

Group II: Claims 1-4, 6, and 10-13, drawn to a pharmaceutically useful compound for inhibiting immunostimulation by immunostimulatory sequence oligodeoxynucleotides comprising an oligonucleotide containing a hexamer region having the nucleotide sequence AAGCTT;

Group III: Claims 1-4, 7 and 10-13, drawn to a pharmaceutically useful compound for inhibiting immunostimulation by immunostimulatory sequence oligodeoxynucleotides comprising an oligonucleotide containing a hexamer region having the nucleotide sequence AGGGCT;

Group IV: Claims 1-4, 8, and 10-13, drawn to a pharmaceutically useful compound for inhibiting immunostimulation by immunostimulatory sequence oligodeoxynucleotides comprising an oligonucleotide containing a hexamer region having the nucleotide sequence GAGGTT;

Group V-XXII: Claims 1-4, 9, and 10-13, drawn to a pharmaceutically useful compound for

inhibiting immunostimulation by immunostimulatory sequence oligodeoxynucleotides comprising an oligonucleotide containing hexamer region having the nucleotide sequence AAGCTT, AGGCTC, GAGCTT, GGGCTT, AAGCTC, , AAGGCTC, GAGCTC, GGGCTC, AAGCCC, AGGCC, GAGCCC, GGGCCC, AGGCCT, GAGCCT, GGGGCT, TTGCAA, AATGTT, GGGGTT and AAGCCC;

Group XXIV: Claims 14-19 and 22-24, drawn to a method for inhibiting the immunostimulatory activity of ISS-ODN in contact with a population of vertebrate cells which includes lymphocytes or monocytes comprising contacting the population of vertebrate cells with an immunoinhibitory amount of an oligonucleotide;

Group XXV: Claims 20 and 21, drawn to a method for prolonging gene expression in a recombinant expression vector believed to contain at least one ISS-ODN comprising contacting the recombinant expression vector with an immunoinhibitory amount of an oligonucleotide containing a hexamer region;

Group XXVI: Claim 25, drawn to a method for boosting a Th2 type immune response to an antigen comprising contacting a population of antigen stimulated vertebrate cells including lymphocytes with an immunostimulatory amount of an oligonucleotide; and

Group XXVII: Claims 26-29, drawn to a method for identifying oligonucleotides which inhibit the immunostimulatory activity of immunostimulatory oligonucleotides, and the oligos that are identified by such process , and to a method for detecting ISS-ODN activity in a host.

Applicants hereby elect to prosecute the claims of Group I (Claims 1-5 and 10-13), with traverse. Applicants expressly reserve the right under 35 USC §121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application.

The Restriction Requirement also required election of one recited sequence. Applicants hereby elect the sequence AAGGTT, with traverse.

The above elections are made with traverse. Applicants submit that the restriction requirement is not proper. The parent case, U.S. Patent Application Serial No. 09/092,314, filed June 5, 1998, issued as U.S. Patent No. 6,225,292 with claims directed to compositions, including claims reciting AAGGTT, AAGCTT, AGGGCT, and GAGGTT, as well as claims directed to kits comprising certain nucleic acids (i.e., with claims as in Groups I-XII of the instant Restriction Requirement); claims directed to methods for reducing the immunostimulatory activity of an immunostimulatory nucleic acid (i.e., with claims similar to those of Group XXIV of the instant Restriction Requirement); claims directed to methods for

methods of boosting a Th2 type immune response (i.e., with claims similar to those of Group XXVI of the instant Restriction Requirement); and claims directed to methods for identifying nucleic acid molecules that inhibit the immunostimulatory activity of an immunostimulatory oligonucleotide (i.e., with claims similar to those of Group XXVII of the instant Restriction Requirement). Because these claims were examined together in U.S. Patent No. 6,225,292, Applicants submit that at least Groups I-XII, XXIV, XXVI, and XXVII should be examined together in the instant application. Accordingly, Applicants traverse the restriction requirement.

### III. CONCLUSION

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, order number UCAL173CON.

Respectfully submitted,  
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